

BEFORE THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

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In the Matter of:

Proposed
STIPULATION AND CONSENT
ORDER

Clean Harbors Environmental Services, Inc.
P.O. Box 9149
Norwell, MA 02061-9149

MAD039322250

No: 0801003

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This **proposed STIPULATION AND CONSENT ORDER** (CONSENT ORDER) is issued by the UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD (the Board) pursuant to the Utah Used Oil Management Act (the Act), section 19-6-721, et seq., Utah Code Annotated 1953, as amended.

STIPULATION

1. Clean Harbors Environmental Services, Inc. (Clean Harbors) is a "person" as defined in UCA 19-1-103(4) and is subject to all applicable provisions of the Act and R315-15 of the Utah Administrative Code (the Rules).
2. Clean Harbors is a used oil transporter operating in Utah at 11600 North Aptus Road, Aragonite, and headquartered in Norwell, Massachusetts.
3. Clean Harbors Environmental Services obtained a used oil transporter permit (UOP-0091-05), on May 2, 2005, from the Utah Division of Solid and Hazardous Waste (the Division).
4. On August 8, 2007, Division inspectors visited the Clean Harbors Aragonite facility located at 11600 North Aptus Road, Aragonite, Utah, as part of an annual used oil inspection. During the inspection, the inspection team documented several used oil transporter compliance issues. These compliance issues led to the issuance of a NOTICE OF VIOLATION AND ORDER FOR COMPLIANCE No. 0711029 (NOV) on January 2, 2008.
5. The Board and Clean Harbors (the parties) admit the Board has jurisdiction over this matter.
6. The parties now wish to resolve this matter fully without resorting to administrative or judicial proceedings.

7. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts. None of the stipulations related herein shall be considered admissions by any party, other than Paragraph 5 above, and shall not be used by any person related or unrelated to this CONSENT ORDER for purposes other than determining the basis of this CONSENT ORDER.

CONSENT ORDER

8. In full settlement of the violations alleged in the NOV described in item 4 above, Clean Harbors shall pay a penalty of \$11,000.00 to the Utah Department of Environmental Quality, c/o Dennis R. Downs, Executive Secretary, Utah Solid and Hazardous Waste Control Board, PO Box 144880, Salt Lake City, Utah 84114-4880. The payment will be due at the close of business on the 30th day after the effective date of this CONSENT ORDER. If Clean Harbors fails to submit its payment by the due date, it will be considered to be in violation of this CONSENT ORDER, and may be subject to further enforcement actions.
9. This CONSENT ORDER shall not in any way relieve Clean Harbors of any obligation to comply with applicable local, state, or federal law.
10. This CONSENT ORDER shall become effective upon execution by Clean Harbors and the Executive Secretary of the Board.

Dated this _____ day of _____, 2008

Clean Harbors Environmental Services, Inc. Utah Solid and Hazardous Waste Control Board

By: _____

Title: _____

By: _____

Dennis R. Downs
Executive Secretary

**NARRATIVE EXPLANATION TO SUPPORT PENALTY
AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER
#0801003**

CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.

NOV # 0711029 **Violation #** 1

Violation description: Failure to follow analysis plan.

1. Gravity Based Penalty

- (a) Potential for Harm - Moderate: The failure to test is usually a significant violation because testing is designed to ensure used oil product is clean enough to burn. However, in this case the used oil was inadvertently burned by Clean Harbors Aragonite as hazardous waste in a permitted hazardous waste incinerator, thereby reducing the danger to human health and the environment. However, failure by permitted used oil transporters to follow their analysis plans still presents a harm to the program.
- (b) Extent of Deviation - Major: The inspection team found no evidence of any loads being tested per analysis plan in the year preceding the inspection.
- (c) Multiple/Multi-day: - N.A.

2. Adjustment Factors (if applicable)

- (a) Good faith - This component was not considered.
- (b) Willfulness/Negligence - This component was not considered.
- (c) History of Compliance or Noncompliance - This component was not considered.
- (d) Ability to pay - This component was not considered.
- (e) Other Unique Factors - This component was not considered.

- 3. Economic Benefit** Any savings obtained from failure to test is offset by treating the used oil as a hazardous waste rather than as a fuel.

4. Recalculation of Penalty based on New Information

No new information has been received regarding this case.

NOV # 0711029 **Violation #** 2

Violation description: Failure to test for halogens to meet requirements of the rebuttable presumption.

1. Gravity Based Penalty

- (a) Potential for Harm - Moderate: The failure to test for halogens is usually a grave violation because testing is designed to ensure that used oil is not managed as a hazardous waste. However, in this case the used oil was managed by Clean Harbors Aragonite as hazardous waste in a permitted hazardous waste facility, thereby reducing the danger to human health and the environment. However, it is unclear whether the used oil was handled as hazardous waste during transport, and so the higher end of the penalty range was used. Failure by permitted used oil transporters to follow their analysis plans still presents a harm to the program.
- (b) Extent of Deviation - Major: The inspection team found no evidence of any loads being tested for halogens in the year preceding the inspection.
- (c) Multiple/Multi-day: - N.A.

2. Adjustment Factors (if applicable)

- (a) Good faith - This component was not considered.
- (b) Willfulness/Negligence - This component was not considered.
- (c) History of Compliance or Noncompliance - This component was not considered.
- (d) Ability to pay - This component was not considered.
- (e) Other Unique Factors - This component was not considered.

- 3. Economic Benefit** Any savings obtained from failure to test is offset by treating the used oil as a hazardous waste rather than as a fuel.

4. Recalculation of Penalty based on New Information

No new information has been received regarding this case.

NOV # 0711029 Violation # 3

Violation description: Failure to clearly track used oil as used oil.

1. Gravity Based Penalty

- (a) Potential for Harm - Moderate: Unlike similar violations by other companies, this failure to clearly track used oil as used oil resulted in the used oil being handled *more* (not less) stringently than would have been required if handled as a used oil. Thus, the poor labeling resulted in management as a Hazardous waste or material. On the other hand, the failure did directly lead to a documented confusion by the receiving party (Clean Harbors Aragonite) and a resulting practice of treating used oil as a hazardous waste rather than as the fuel resource described in the Used Oil Act. In this manner, the used oil recycling potential was Awasted@.
- (b) Extent of Deviation - Moderate: The entire used oil transportation transaction after the oil was picked up from generators transpired between two sister companies. The transporter (Clean Harbors Environmental Services) was under the impression that it was tracking the used oil appropriately (as evidenced by its computer printouts which did list the material as used oil) but it did fail to transfer that information in an understandable manner to the burner (Clean Harbors Aragonite).
- (c) Multiple/Multi-day: - N.A.

2. Adjustment Factors (if applicable)

- (a) Good faith - This component was not considered.
- (b) Willfulness/Negligence - This component was not considered.
- (c) History of Compliance or Noncompliance - This component was not considered.
- (d) Ability to pay - This component was not considered.
- (e) Other Unique Factors - This component was not considered.

- 3. Economic Benefit** Any savings obtained from failure to test is offset by treating the used oil as a hazardous waste rather than as a fuel.

4. Recalculation of Penalty based on New Information

No new information has been received regarding this case.

PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER #0801003

Company Name Clean Harbors Environ. Services

NOV # 0711029

Prepared by David Wheeler

EPA ID# MAD039322250

NOV date January 2, 2008

Date Prepared January 17, 2008

| Violation number (from NOV) | 1 | 2 | 3 |
|--|---------------------------------|---|---|
| Violation description | Failure to follow analysis plan | Failure to test for halogens (rebuttable presumption) | Failure to clearly track used oil as used oil |
| 1. Gravity based penalty from matrix (a) Potential for Harm (b) Extent of Deviation | moderate major \$4,000 | moderate major \$4,400 | moderate moderate \$2,600 |
| 2. Select an amount from the appropriate multi-day matrix cell. | -- | -- | -- |
| 3. Multiply Line 2 by number of days of violation minus 1 (or other number, as appropriate). | -- | -- | -- |
| 4. Add line 1 and line 3. | \$4,000 | \$4,400 | \$2,600 |
| 5. Percent increase/decrease for good faith. | 0 | 0 | 0 |
| 6. Percent increase/decrease for willfulness/negligence. | 0 | 0 | 0 |
| 7. Percent increase/decrease for history of compliance/noncompliance. | 0 | 0 | 0 |
| 8. Percent increase/decrease for other unique factors (except litigation risk). | 0 | 0 | 0 |
| 9. Total lines 5 through 8. | 0 | 0 | 0 |
| 10. Multiply line 4 by line 9. | 0 | 0 | 0 |
| 11. Add lines 4 and 10. | \$4,000 | \$4,400 | \$2,600 |
| 12. Calculate economic benefit. | 0 | 0 | 0 |
| 13. Add lines 11 and 12. | \$4,000 | \$4,400 | \$2,600 |
| 14. Adjustment amount for ability-to-pay. | -- | -- | -- |
| 15. Adjustment amount for litigation risk. | -- | -- | -- |
| 16. Add lines 14 and 15. | -- | -- | -- |
| 17. Subtract line 15 from line 13 for final settlement amount. | \$4,000 | \$4,400 | \$2,600 |

Final Penalty = \$11,000